

August 9, 2000

Ms. Sherry Green
Office of Site Remediation Enforcement
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Mailcode 2272A
Washington, DC 20460

Dear Ms. Green:

EPA is to be commended for the stakeholders meeting on July 17th. The meeting provided a valuable forum for stakeholders and EPA to hold a rational and informative discussion on issues surrounding implementation of the Superfund Recycling Equity Act (SREA).

On behalf of the Paper Recycling Coalition (PRC), I submit the following comments in response to EPA's request for input on the development of a SREA guidance. The PRC represents the interests of a number of companies* manufacturing 100% recycled newsprint and paperboard at mills throughout the United States. Its members include some of the largest collectors and processors of recovered paper, as well as the largest manufacturers of recycled paperboard products, including folding cartons such as cereal boxes, furniture and automotive components, and other products.

In deciding whether to issue a guidance, and what form it should take, the determining factor should be whether such an exercise furthers or hinders Congressional intent:

To promote the reuse and recycling of scrap material;

To create greater equity in the statutory treatment of recycled versus virgin materials; and

Remove disincentives and impediments to recycling created as an unintended consequence of the 1980 Superfund liability provisions.

The complexity of the recycling industry, the differing levels of environmental risk associated with different processes and materials, and the number of players involved, however, will make it very difficult to develop one guidance that adequately covers all possible scenarios. SREA affects a broad spectrum of recycling participants. At the

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beginning of the chain are the generators, including but not limited to local governments, auto supply stores, large and small retailers, manufacturing facilities and even small print and copy shops. There are also the middlemen including processors, brokers, and finally the consumers such as paper mills and smelters.

The majority of recyclables are relatively benign -- paper, plastic, glass, and rubber. Other recyclables including metals and lead acid batteries, carry higher degrees of risk, as is recognized in SREA. There are also numerous other materials, not directly addressed by SREA, that are being recycled and that pose a variety of risk factors, including construction and demolition debris and electronics.

A prescriptive guidance that attempts to address the needs of one party or one materials group will most assuredly create difficulties for others in the recycling chain.

Reasonable Care

Despite the difficulty of addressing the many sectors of the recycling industry, there are significant questions relative to SREA's "reasonable care" standard that direction from EPA could be helpful. Defining reasonable care, however, is an impossible task -- one person's reasonable care can easily be another's gross negligence, depending on circumstance. Rather than defining reasonable care or establishing a checklist to be used in all situations, EPA should set forth a statement of principles of reasonable care. Such principles should be accompanied by examples addressing a variety of situations and materials.

As EPA considers the concept of "reasonable care" it must also consider relative risk. For example, one can be exercising reasonable care while driving on a divided highway on a sunny day at 65 mph, but maintaining the same speed when there are three inches of snow on the road would be highly imprudent. The same principle applies in the recycling industry. Different materials carry different risk factors -- some are relatively benign while others may be extremely hazardous to both health and the environment. Requiring the same levels of diligence for materials with different risk factors would create barriers to recycling.

Scope

As discussed in the stakeholders meeting, one of the key elements of any "reasonable care" determination is the scope of the investigation required under SREA. The statute requires that sellers take steps to determine whether the consuming facility is in substantial compliance with laws and regulations "applicable to the handling, processing, reclamation, storage, or other management activities associated with recyclable materials". A statement of

principles, if issued, should clarify what it means for a law or regulation are to be “associated with recyclable materials”.

The course by which recovered materials are processed and enter into commerce is a continuum, starting at the point where the material is diverted from the waste stream, thereby becoming a recyclable material, and ending as a final product. In the extreme one might argue that all laws and regulations applicable to all steps in the process, from diversion through the final manufacturing step at a consuming facility.

Requiring the seller of recovered paper to review compliance with all laws applicable to all operations at a consuming facility would create an extreme burden in the paper industry because they include a wide variety of operations. While one recycled paper mill might produce rolls of paper for sale to others, another mill might include a converting operation that manufactures paper or paperboard products or packaging. Since the conversion facility might include a large scale printing operation, does a “reasonable care” standard require the seller of the recyclable paper to check the compliance record of the printing facility?

Another paper mill might blend recovered paper fiber with virgin fiber, producing a recycled content product. Like all paper mills it operates a boiler to produce steam used in the papermaking process. Does the reasonable care standard require the seller to check on the emissions from the boiler, even though only 20% of its raw materials come from recovered fiber? Holding a seller of recyclable materials accountable for a consuming facility’s manufacturing operations, while not holding a seller of virgin material equally accountable would be counterproductive and contrary to the law’s intent.

An alternative approach to the question of scope is to determine when a recyclable material ceases to be a recyclable material for purposes of SREA. In the chain of activities that makes up the recycling process there is a point at which the material, recovered paper, ceases to be a recyclable material. A corrugated box, for example, becomes a recyclable material the moment it is emptied -- it has the potential of being recycled. If it is then diverted from the waste stream into the recycling stream it is likely to be baled with other corrugated boxes for shipment to a paper mill.

At the mill the bale of corrugated boxes is placed in a hydropulper (a machine that removes large contaminants and uses water and mechanics to break down paper into its individual fibers). At this point, the corrugated box, the original recyclable material, has ceased to exist. Even though the slurry may undergo subsequent cleaning and processing before it is made into paper, the majority of the process is designed to change the characteristic of the final product, rather than modifying or affecting the fiber recovered from the recyclable paper.

To the extent that the corrugated box ceases to exist in the hydropulper, sellers of recyclable materials who wish to avail themselves of SREA should not be required to review the consuming facilities' compliance record beyond the point at which the material ceases to be a recyclable material. Such a position is in keeping with the definition of "recyclable material" set forth in SREA, which references "scrap paper, scrap plastic, scrap glass, scrap textiles...". The slurry coming out of the hydropulper is not "scrap paper", and therefore not a "recyclable material".

Conclusion

The PRC encourages EPA to move forward with a statement of principles that compliments the intent of the act. Such principles must be flexible, recognize relative risk factors and, in recognition of the fact that SREA does not require any participation by the consuming facility, maintain a narrow scope limited to those laws directly affecting the recyclable materials and not subsequent manufacturing processes.

The PRC appreciates the opportunity it had to participate in the stakeholders meeting and is prepared to assist the Agency as it moves forward. Please do not hesitate to call me if you have any additional questions about the paper recycling industry.

Sincerely,

Pablo Collins
Washington Representative
Paper Recycling Coalition